

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4916 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?No
2. To be referred to the Reporter or not?
No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
No
5. Whether it is to be circulated to the Civil Judge?
NNo

AMISH ANILKUMAR SHAH

Versus

STATE OF GUJARAT

Appearance:

Mr. S.V. Raju with MS MINOO A SHAH for Petitioners

Mr. K.P. Rawal, APP, for Respondent No. 1

SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 12/02/98

ORAL JUDGEMENT

The petitioners, who have been arraigned as accused in Criminal Case No.45 of 1996, pending before the Special Judge, Ahmedabad, have filed this application, under Section 482 of the Code of Criminal Procedure ('Code' for short), to quash and set aside the Criminal Case No.45 of 1996, for breach of the provisions of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 1993 ('LPG Order' for short), punishable under Sections 7 and 9 of the Essential Commodities Act, 1955 ('Act' for short).

Respondent No.2 (original complainant), who is Deputy Mamlatdar, Civil Supplies Department, City Mamlatdar Office, Ahmedabad, visited Navin Foundry & Engineering Works, at Naroda, on May 24, 1996, and found that LPG Cylinders were being connected in vehicles Nos.GAO 3127 and GBL 2127. The complainant, on enquiry, learnt that the said two vehicles had come to the foundry for being fitted with the LPG Cylinders. In the complaint, it is mentioned that the said vehicles were in the process of fitting with non-subsidised LPG Cylinders. The complainant, after obtaining sanction of the competent authority, lodged a complaint against the petitioners in the court of the learned Special Judge, Ahmedabad, which came to be registered as Criminal Case No.45 of 1996. The learned Special Judge, Ahmedabad, has issued process, on September 11, 1996, against the petitioners, for breach of the provisions of the LPG Order, punishable under Sections 7 and 9 of the Act.

The petitioners have challenged issuance of process, and prayed for quashing of the complaint filed by respondent No.2 in the court of learned Special Judge, Ahmedabad, by filing this Misc. Criminal Application under Section 482 of the Code.

Mr. S.V. Raju, learned counsel appearing for the petitioners, has strenuously urged that no averment is made in the complaint that the petitioners have committed breach of which provisions of the LPG Order. It is further submitted that non-subsidised LPG Cylinders are not covered by any of the provisions of the LPG Order, because non-subsidised LPG Cylinders were not obtained by public distribution system, which has been defined in clause 2(1) of the LPG Order. It is also submitted by the learned counsel for the petitioners that LPG Cylinders, which were found from the premises of the petitioners, were obtained from the Parallel Marketing System, which are not covered by clause 3 of the LPG Order. It is, therefore, submitted by the learned counsel appearing for the petitioners that the petitioners have not committed breach of any of the provisions of the LPG Order.

On the other hand, it is submitted by the learned Additional Public Prosecutor that, as per clause 3(c) of the LPG Order, use of liquefied petroleum gas for any purpose other than for cooking is prohibited and, therefore, the petitioners have committed breach of clause 3(c) of the LPG Order.

It is an admitted fact that non-subsidised cylinders were found from the possession of the petitioners. Non-subsidised cylinders are not covered under the public distribution system and, therefore, the LPG Order will not be applicable to use of non-subsidised cylinders. It should be stated that, in the complaint, there is not a whisper that the petitioners, who are the original accused, have committed breach of which clause of the LPG Order, nor does the complaint, prima facie, show that the petitioners have committed breach of clause 3(c) of the LPG Order. Moreover, when the complainant has come forward with the case that non-subsidised cylinders were found from the possession of the petitioners, it cannot be said that the petitioners have committed breach of the LPG Order. In my opinion, the complainant has, with deliberate purpose, not mentioned that the petitioners have committed breach of which clause of the LPG Order.

The learned counsel for the petitioner has placed reliance on the decision of the Madhya Pradesh High Court in the case of Vinodkumar Sanghai v. State of M.P., reported in 1996 Cri. L.J. 2774, in support of his contention that there must be some material on record to, prima facie, indicate breach, and the court could not

fish in the matter to find out any breach at the time of trial when the same was not in existence at the time of framing of charge. In my opinion, the aforesaid judgment of the Madhya Pradesh High Court, relied upon by the learned counsel for the petitioner, would apply, with all force, to the facts of the present case. The complainant is totally silent that the petitioners have committed breach of which clause of the LPG Order. Prima facie, it appears that clause 3(c) would not be applicable to the facts of the present case, as the subsidised cylinders, which were found in the possession of the petitioners, were obtained through Public Distribution System. It is the settled legal principle that, at the time of deciding quashing proceedings under Section 482 of the Code, the Court is required to see the allegations made in the complaint. Reading the complaint, it must be stated that the complainant has not come out with a clear allegation that the petitioners have committed breach of clause 3(c) of the Order, which is punishable under Section 7 of the Act. In absence of any allegations and averments made in the complaint with regard to breach alleged to have been committed by the petitioners, the said complaint is required to be quashed. Filing of such vague complaint, in my opinion, is a sheer abuse of process of law, which cannot be permitted.

As a result of foregoing discussion, this Criminal Misc. Application is allowed. The complaint which is registered as Criminal Case No.45 of 1996, pending before the Special Judge, Court No.5, City Civil Court, Ahmedabad, is quashed, and the process issued thereon by the learned Special Judge, Ahmedabad, on September 11,1996, against the petitioners, is quashed and set aside. Rule is made absolute accordingly.

(swamy)